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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
: :  
SEARS HOLDING CORPORATION, *et al.*, : Case No.: 18-23538 (RDD)  
: :  
Debtors.<sup>1</sup> : (Jointly Administered)  
: :  
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**OBJECTION AND RESERVATION OF RIGHTS OF CAPARRA CENTER  
ASSOCIATES, LLC (STORE NO. 4490) TO DEBTORS'  
SUPPLEMENTAL NOTICE OF CURE COSTS  
AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES  
IN CONNECTION WITH GLOBAL SALE TRANSACTION (Docket # 1774)**

Caparra Center Associates, ("Caparra"), by and through its undersigned counsel, as  
and for its objection (the "Cure Costs Objection") to the "Supplemental Notice of Cure Costs and  
Potential Assumption and Assignment of Executory Contracts And Unexpired Leases in  
Connection with Global Sale Transaction" (the "Supplemental Cure Notice") filed by the above-  
captioned debtors and debtors-in-possession (collectively, the "Debtor") represents as follows:

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc.(6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc.(2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SRC Sparrow 1 LLC (None); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); SRC Sparrow 2 LLC (None); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); SRC O.P. LLC (None); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); SRC Facilities LLC (None); and SRC Real Estate (TX), LLC (None). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

**BACKGROUND**

1. On or about October 15, 2018, (the “Petition Date”), Sears Holdings Corporation and several of its affiliates, including Kmart Corporation (“Kmart”), filed petitions for bankruptcy relief pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor has continued to operate its business and manage its properties as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. On November 29, 2018, the Court entered the Order Approving Global Bidding Procedures and Granting Related Relief (the “Global Bidding Procedures Order” [Docket # 816].

3. Caparra is the owner of the real property located at San Patricio Plaza (the “Premises”). The Debtor is party to a certain lease dated June 19, 1963 (the “Lease”) by and between San Patricio Shopping Center, now Caparra, as Landlord, (the “Landlord”) and S.S. Kresge Company, now Sears Holdings which includes Kmart, the Debtor entity, as Tenant (the “Tenant”), for the Premises known as Store #4490, which Lease has been subsequently renewed and amended, most recently by letter of agreement in which Tenant elected to renew and extend the Lease for an additional term of five (5) years commencing on February 1, 2019, to and including January 31, 2024, (the “Lease Renewal”). A copy of the Lease and Lease Renewal are in Debtor’s possession.

4. On January 18, 2019, the Debtors filed the Notice of Successful Bidder (the “Successful Bidder Notice”) [Docket # 1730] which sets forth that the offer submitted by Transform Holdco, LLC, an affiliate of ESL Investments, Inc., (the “Buyer”), to acquire all or substantially all of the Debtor’s Assets (the Global Assets), was the highest or best offer for the Global Assets. (A copy of the asset purchase agreement between the Debtors and the Buyer (the “Asset Purchase Agreement”) is attached to the Successful Bidder Notice as Exhibit B and is in Debtor’s possession.

**OBJECTION**

5. On January 23, 2019, the Debtors filed the Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction (the “Supplemental Cure Notice”) [Docket # 1774]. The Supplemental Cure Notice Exhibit B-1, List of Executory Contracts, Real Estate Leases – Additional, page 9, No. 243, identifies Caparra as having a proposed cure amount of \$40,682.80 (the “Proposed Cure Amount”).

6. 11 U.S.C. § 365(b)(1) of the Bankruptcy Code generally permits a debtor to assume or to reject an unexpired lease in the debtor’s discretion. However, in order to assume an unexpired lease, the Debtor must (i) cure (or provide adequate assurance that they will promptly cure) all defaults that exist as of the Petition Date; (ii) compensate, or provide adequate assurance that they will compensate the counterparty to the unexpired lease for any pecuniary loss arising from such defaults; and (iii) provide adequate assurance of future performance under the contract.

7. The Proposed Cure Amount contained in the Cure Notice for the Lease is incorrect and does not reflect additional rent in the form of unpaid taxes and insurance premiums.

8. The actual amount outstanding under the Lease through January 31, 2019 is \$372,599.49, representing rent, cam, unpaid real estate taxes and unpaid insurance expenses (the “Actual Cure Amount”). A Statement of the Actual Cure Amount and Tenant Statement are attached hereto as Exhibit A. Supporting documentation is in the Debtor’s possession.

9. In accordance with 11 U.S.C. § 365(b)(1), the Lease may not be assumed unless all outstanding amounts are paid, plus additional amounts due and owing subsequent to the Petition Date, through the effective date of the proposed assumption and assignment of the Lease. Caparra objects to the Proposed Cure Amount in connection with the potential assumption and

10. Caparra further objects to the assumption and/or assignment of the Lease because no adequate assurance of future performance pursuant to section 365(b)(1)(C) has been provided.

### **RESERVATION OF RIGHTS**

11. This Cure Cost Objection is without prejudice to the fact that (a) other and additional cure claim amounts may exist and or may become known at a future date and (b) will accrue on an on-going basis between the filing of this Cure Cost Objection and any subsequent assumption of the Lease. Caparra expressly reserves its right to amend or supplement this Cure Cost Objection through and including the effective date of any proposed assumption and assignment of the Lease and further reserves the right to contest the assumption, assignment or rejection of the Lease on any basis other than Debtor's payment of the Actual Cure Amount.

### **CONCLUSION**

WHEREFORE, Caparra respectfully requests the entry of an order pursuant to 11 U.S.C. § 365(b)(1) requiring that, as a condition of and prior to assuming and assigning the Lease, the Debtors cure all pre- and post-petition amounts as set forth herein in the total amount of \$372,599.49, together with any and all other cure amounts which may be due under the Lease prior to the actual date that the Lease is assumed, and provide adequate assurance of future performance and with such other and further relief as is just and proper.

Dated: Fort Lauderdale, Florida  
January 24, 2019

Law Offices of Penny R. Stark

By: s/s Penny R. Stark  
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Patricio Plaza

**EXHIBIT A**

- 1. Statement of Actual Cure Amount**
- 2. Tenant Statement**

## CAPARRA CENTER ASSOCIATES, LLC

### Statement of Actual Cure Amount

**KMART Cure Amount Detail**  
**As of 1/29/2019**  
**Store #4490**

	Billed Amount	PAID 11/7/18 Check #34000317 (17 days)	Outstanding Pre-petition Balance	Outstanding Post-petition Balance	Balance as of 1/29/2019
October RENT	\$ 62,333.33	\$ 34,182.79	\$ 28,150.54	-	\$ 28,150.54
October CAM	27,750.00	15,217.74	12,532.26	-	12,532.26
Total billed/Oct	90,083.33	49,400.53	\$ 40,682.80	\$ -	40,682.80
		55%	45%		
PROPERTY TAX INVOICE (7/1-12/31/2018)	\$ 118,047.82	-	68,005.81	50,042.01	118,047.82
PROPERTY TAX INVOICE (7/1-12/31/2018)	\$ 3,061.75	-	1,763.83	1,297.92	3,061.75
INSURANCE ANNUAL INVOICE (11/1/2018- 10/31/2019)	\$ 89,216.53			89,216.53	89,216.53
PROPERTY TAX INVOICE (1/1-6/30/2019)	\$ 118,528.84	-		118,528.84	118,528.84
PROPERTY TAX INVOICE (1/1-6/30/2019)	\$ 3,061.75	-		3,061.75	3,061.75
Cure Amount Grand Total			\$ 110,452.44	\$ 262,147.05	\$ 372,599.49

CAPARRA CENTER ASSOCIATES , LLC  
P.O. BOX 9506 . SAN JUAN PR 00908  
TEL (787) 792-5328 FAX (787) 782-9555  
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# STATEMENT

January 24, 2019

SEARS HOLDING CORP.  
K MART (4490)  
3333 BEVERLY ROAD  
HOFFMAN ESTATES, IL 60179

SAN PATRICIO PLAZA  
Guaynabo,PR 00908  
Unit: A-01  
ID: 00049  
K-MART

Date	Invoice No	Description	Amount	Tax	Payment	Balance
09/30/2018	21672	PROPERTY TAX/SEMI ANNUAL (07/01/2018 - 12/31/2018)	\$118,047.82	\$0.00	\$0.00	\$118,047.82
10/01/2018	21548	Property Tax for the First Semester 2018-2019 CAM (10/01/2018 - 10/31/2018)	\$27,750.00	\$0.00	(\$15,217.74)	\$12,532.26
10/01/2018	21548	RENT (10/01/2018 - 10/31/2018)	\$62,333.33	\$0.00	(\$34,182.79)	\$28,150.54
10/31/2018	22013	PROPERTY TAX/SEMI ANNUAL (07/01/2018 - 12/31/2018)	\$3,061.75	\$0.00	\$0.00	\$3,061.75
12/28/2018	22479	Special Property Tax for the First Semester 2018-2019 INSURANCE/ANNUAL (11/01/2018 - 10/31/2019)	\$89,216.53	\$0.00	\$0.00	\$89,216.53
01/24/2019	22843	INSURANCE 2019 PROPERTY TAX/SEMI ANNUAL (01/01/2019 - 06/30/2019)	\$118,528.84	\$0.00	\$0.00	\$118,528.84
01/24/2019	22844	Property Tax for the Second Semester 2018-2019 PROPERTY TAX/SEMI ANNUAL (01/01/2019 - 06/30/2019)	\$3,074.23	\$0.00	\$0.00	\$3,074.23
		Special Property Tax for the Second Semester 2018-2019				

**LATE PAYMENT WARNING:** *If we do not receive your rent payment by the 1st day of the month, you may have to pay a late fee of \$100. This is not a waiver of any rights set forth in the lease agreement.*

Total Amount Due				\$372,611.97
Current	Over 30	Over 60	Over 90	Over 120
\$210,819.60	\$0.00	\$3,061.75	\$158,730.62	\$0.00

**CERTIFICATE OF SERVICE**

I, Penny R. Stark, hereby certify under the penalty of perjury that on January 25, 2019, I caused a copy of this Objection of Caparra Center Associates to Cure Amount (the "Objection") to be electronically filed with the Clerk of Court using the CM/ECF System and to be served via this system on all parties who have consented to electronic service. I further certify that I served the Objection by email on the following "Objection Recipients," as identified in Exhibit 1 to this Court's *Order Approving Global Bidding Procedures and Granting Related Relief*, D.I. 816:

I. Bid Notice Parties

a. Debtors

Rob Riecker: [rob.riecker@searshc.com](mailto:rob.riecker@searshc.com)  
Luke Valentino: [luke.valentino@searshc.com](mailto:luke.valentino@searshc.com)  
Mohsin Meghji: [mmeghji@miiipartners.com](mailto:mmeghji@miiipartners.com)  
General Counsel: [counsel@searshc.com](mailto:counsel@searshc.com)

b. Debtors' counsel

Ray Schrock, Esq.: [ray.schrock@weil.com](mailto:ray.schrock@weil.com)  
Jacqueline Marcus, Esq.: [jacqueline.marcus@weil.com](mailto:jacqueline.marcus@weil.com)  
Garrett A. Fail, Esq.: [garrett.fail@weil.com](mailto:garrett.fail@weil.com)  
Sunny Singh, Esq.: [sunny.singh@weil.com](mailto:sunny.singh@weil.com)  
Ellen J. Odoner, Esq.: [Ellen.Odoner@weil.com](mailto:Ellen.Odoner@weil.com)  
Gavin Westerman, Esq.: [Gavin.Westerman@weil.com](mailto:Gavin.Westerman@weil.com)

c. Debtors' investment banker:

Brandon Aebersold and Levi Quaintance: [project.blue.rx@lazard.com](mailto:project.blue.rx@lazard.com)

II. Buyer Parties

a. Buyer

Kunal S. Kamalani: [kunal@eslinvest.com](mailto:kunal@eslinvest.com)  
Harold Talisman: [harold@eslinvest.com](mailto:harold@eslinvest.com)

b. Counsel

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Sean A. O'Neal, Esq.: [soneal@cgsh.com](mailto:soneal@cgsh.com)

III. Consultation Parties

a. Bank of America

Paul Leake, Esq.: [Paul.Leake@skadden.com](mailto:Paul.Leake@skadden.com)  
Shana Elberg, Esq.: [Shana.Elberg@skadden.com](mailto:Shana.Elberg@skadden.com)  
George Howard, Esq.: [George.Howard@skadden.com](mailto:George.Howard@skadden.com)

b. Wells Fargo Bank

Kevin J. Simard, Esq.: [ksimard@choate.com](mailto:ksimard@choate.com)  
Jonathan D. Marshall, Esq.: [jmarshall@choate.com](mailto:jmarshall@choate.com)

c. Committee

Ira S. Dizengoff, Esq.: [idizengoff@akingump.com](mailto:idizengoff@akingump.com)  
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Sara L. Brauner, Esq.: [sbrauner@akingump.com](mailto:sbrauner@akingump.com)

Dated: January 25, 2019  
Ft Lauderdale, Florida

s/s Penny Stark  
Penny R. Stark